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TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	09/025,896	
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	First Named Inventor	Billie Longstreth	
	Group Art Unit	3724	
	Examiner Name	Charles Goodman	
Total Number of Pages in This Submission	12	Express Mail # Attorney Docket Number	E U 558298175 US

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Firm or Individual name	BILLIE JEAN LONGSTRETH
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Date	January 11, 2005

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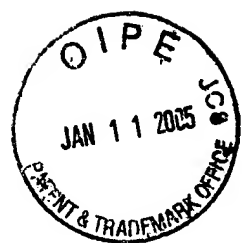
Subject: Appeal Brief for Patent Application
No. 09/025,896

I received an office communication, Notification of Non-Compliance with 37 CFR 1.192©, dated December 17, 2004 from the patent examiner, Charles Goodman, notifying me that the Appeal Brief I filed on September 16, 2004 was defective for failure to comply with one or more provisions of 37 CFR 1.192© and to avoid dismissal of the appeal I must file a complete new brief.

Attached herewith is a complete new appeal brief that includes all the required information.


BILLIE JEAN LONGSTRETH
2204 Roseanne Court
Fairborn, Ohio 45324
Telephone No. (937) 878-6902

Incls
Appeal Brief



January 10, 2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BILLIE J. LONGSTRETH	:	BEFORE THE
Appellant pro se	:	BOARD OF PATENT
CABBAGE CUTTER	:	APPEALS AND
Application No.: 09/025,896	:	INTERFERENCES
Filing Date: Feb.18, 1998	:	
2204 Roseanne Court	:	
Fairborn, Ohio 45324	:	

APPELLANT'S APPEAL BRIEF

The applicant, Billie J. Longstreth, Appellant pro se, has appealed the patent examiner's rejection of claim for Patent Application No. 09/025,896, a cabbage cutter.

REAL PARTY OF INTEREST

Billie J. Longstreth, appellant pro se, 2204 Roseanne Court, Fairborn, Ohio 45324.

RELATED APPEALS AND INTERFERENCES

The appellant has no related appeals or interferences that must be considered under current appeal.

STATUS OF CLAIMS

Previous Claims 1-6 has been cancelled. Claim 7 has been presented for examination and has been rejected by the examiner. The rejection of Claim 7 by the Examiner is being appealed.

STATUS OF AMENDMENTS

No amendments have been filed since the current final rejection.

SUMMARY OF INVENTION

(See corresponding reference numerals on the attached drawing)

The claimed invention is a non-powered, hand-operated device that has been designed specifically to cut and chop cabbage comprising a hollow, metal, cylindrical body **1** having two ends, that when placed in a perpendicular position, has a circular top **2** and a circular bottom **3** connected by the cylindrical body wall **1**. The circular top **2** is closed and covered with a permanently affixed cap **4** that extends slightly over onto the exterior wall of the cylindrical body **1** to serve as a handgrip and provide additional strength and durability to the cabbage cutter. The circular bottom rim **3** is open and filed or rubbed down to a smooth, thin, sharp cutting and chopping means **3** that can be sharpened should it become dulled with use. The cabbage cutter has a removable protective cover **5**, contiguous with the cutting and chopping means **3**, that when placed over the cutting and chopping means **3** serves as a protective shield from injury, and protects the cutting and chopping means **3** from becoming damaged when the device is not in use or stored.

The placement of the permanently affixed cap (handgrip) **4** over the closed, metal, circular top **2** adds substantial strength and durability and distinguishes this cabbage cutter from all other non-powered, hand-operated devices in the art that are designed with open top rims, removable tops, and/or removable handgrips.

This cabbage cutter works best when the cabbage head is cut into chunks, and placed in a large container, and the person

using the device grasps the cap (handgrip) **4** and brings the circular cutting and chopping means **3** down repeatedly (in an up and down motion) onto the cabbage, cutting the cabbage to desired size. This cabbage cutter was designed and constructed for strength and durability and can easily, efficiently, and effectively cut through the thick stalks and tightly overlapping leaves.

This cabbage cutter is simply designed, is easy to use, requires no assembly, and has no parts to malfunction during use. Removing the protective cover **5** from the cutting and chopping means **3** readies the device for use. The cabbage cutter is inexpensive to manufacture and, therefore, inexpensive to purchase. The cabbage cutter is easy to clean, dishwasher safe, and takes only a small space to store when not in use.

ISSUES

1. Whether Claim 7 is anticipated by Seib et al.
2. Whether Claim 7 is obvious over Rothje in view of Snyder.
3. Whether Claim 7 is obvious over Rothje in view Seib et al.
4. Whether Claim 7 is obvious over Bell in view of Collins and Snyder.
5. Whether Claim 7 is obvious over Bell in view of Collins and Seib et al.

GROUPING OF CLAIMS

One independent claim, Claim 7, has been presented for examination. Claim 7 stands and falls alone.

ARGUMENTS

1. Claim Rejection under 35 U.S.C. 102:
 - a. Whether Claim 7 is anticipated by Seib et al:

The Examiner, Charles Goodman, rejected the appellant's claim under 35 U.S.C. 102(b) as being anticipated by Seib et al because Seib et al discloses a stoma flange cutter comprising all the elements claimed in the appellant's claimed invention, the cabbage cutter, including a circular top, a circular bottom, a cylindrical body wall, a permanently affixed cap, cutting edge, and a removable protective cover. The appellant argues that two devices can comprise the same elements and still be physically and mechanically different. It is the result of the interrelation or arrangement of these elements in their entity that create the whole device to make each device different from the other. This is the case with the stoma flange cutter anticipated by Seib et al and the claimed invention, the cabbage cutter. Seib's stoma flange cutter differs from the appellant's claimed invention, the cabbage cutter, in that the stoma flange cutter comprises two sections, a top section and a bottom section that are separable and movable. The circular cutter that has all the same elements as the claimed invention that has been compared to the claimed invention, is press fitted into a suitable groove, with support, on the first surface of the top section of the stoma flange cutter with the sharpened edge extending away from surface. The second section (bottom section) of the stoma flange cutter has first and second spaced surface portions. The cutting element is adapted to cut in cooperation with the second section, and the cutting element can be adapted to flip end-to-end when one end becomes dull, whereas, the claimed invention, the cabbage cutter, comprises only one section, a hollow, metal, cylindrical body having two ends and when placed in a perpendicular position has a top and a bottom that are connected by a cylindrical wall; the top is closed and has a permanently affixed handgrip that covers the closed top and extends slightly over onto the wall of the cabbage cutter, and provides additional strength to the device. The bottom of the cabbage cutter is open and filed or rubbed down to a smooth, thin, sharp cutting and chopping edge. The cabbage cutter has a single cutting edge that cannot be adapted to flip end-to-end as the stoma flange cutter due to the closed top and permanently affixed handgrip on the opposite end, but the single circular cutting edge of the cabbage cutter can be sharpened if the cutting and chopping edge should become dulled from extensive use. When the stoma flange cutter is not in use, the device is inserted into an open ended envelope (package cover) means that is square in configuration with the lateral dimensions similar to the diametric extent of the device where sections are effectively held together for protection, storage, and transportation, whereas, the cabbage cutter has a

removable protective cover, contiguous with the cutting and chopping edge, that is placed over the cutting and chopping edge to service as a shield from injury and to protect the cutting and chopping edge from becoming damaged when the device is not in use or stored. Material is inserted between the two sections of the stoma flange cutter for cutting and then the sections are pushed together (one section in each hand) and rotated (if necessary) relative to each other. More particular, between pressure applied to and slight rotation of cutter relative to surface, the flange material is cut so that a flange having an appropriately sized hole is provided for its intended use, whereas, the cutting and chopping edge of the cabbage cutter is located on the open bottom rim of the cabbage cutter and the device works best when cabbage head is cut in chunks, placed in a large container, and an operator grasps the handgrip and brings the cutting and chopping edge down repeatedly (in an up and down motion) onto the cabbage, cutting the cabbage to desired size. Although the two devices do comprise the same parts per se, the claimed invention, the cabbage cutter, is physically and operationally different from Seib's stoma flange cutter to be independently patentable, therefore, for the aforementioned reasons, the appellant argues that it would not be relative to add the features of the cabbage cutter to Seib's stoma flange cutter.

The fact that the claimed invention, the cabbage cutter, cuts cabbage was not given significant patentable weight by the Examiner because the manner in which the claimed invention is intended to be used does not differentiate the claimed invention from a device anticipated by Seib et al satisfying the claimed structural limitations. The appellant respectfully disagrees with the Examiner's decision and argues that the two devices are significantly different, physically and operationally, and also, the appellant would like to point out the fact that the device anticipated by Seib et al lacks the capability to cut cabbage and the claimed invention, the cabbage cutter, lacks the capability to cut a stoma flange.

The appellant argues that the examiner has not presented a convincing line of reasoning as to why he believes the two devices are structurally similar and why the similarities would have been obvious to the ordinary artisan in the field. The appellant argues that the claimed invention is independently patentable over Seib et al for all the aforementioned reasons.

2. Claim Rejections under 35 U.S.C. 103:

a. The ice cream dispenser disclosed by Fred P. Rothje that the examiner has referenced as being similar to my invention, the cabbage cutter (Claim 7) differs from the cabbage cutter in that Rothje's ice cream dispenser involves the use of rotary cutters within the cylindrical body of the device. The open end of the device is provided with a beveled edge and at the upper end of the cylindrical cup a grooved ring is hinged to the cup and this ring which is U-shape in cross section is of the proper diameter to rest upon the top edge of the cup and is adapted to swing away when desired. A snap or spring hook is secured to the cylindrical cup diametrically opposite the hinge of the ring and this hook is used to hold the ring in locked position on the top edge of the cup. Within the ring is a rotatable disk with the edge or circular rim encased within the groove of the ring, and by means of a handle on the top surface of the disk this disk may be turned and guided within the ring. The handle is utilized for manipulating the cup by hand-grasp when forcing the cup into the mass of ice cream, as well as for turning the disk. Two spaced parallel rings and four blades form a rotary cutting frame that is operated by turning the disk by grasping the handle. The ice cream dispenser does not have a protective cover for the cutting edge. Whereas, the cylindrical body of the cabbage cutter is empty, has a permanently closed top, and the cutting and chopping means of the cabbage cutter is located on the bottom rim of the cylindrical body and the cutting and chopping means has a protective cover that is placed over the cutting and chopping edge when the device is not in use or stored. The appellant argues that the differences in the two devices indicate unobviousness, thus, rendering the cabbage cutter unobvious over Rothje's ice cream dispenser. It would not be relative to add the features of the cabbage cutter to Rothje's device.

b. The circle cutter and protective cover disclosed by J. M. Snyder comprises a main body portion which itself comprises a top portion and a bottom portion. The top portion has finger-gripping means such as indentations in the top surface of the body portion. The indentations or recessed portions are arranged so that a substantially central finger gripping means is formed between recessed portions, thus providing walls that may be gripped between the thumb and fingers of the operator's hand. The device has sidewall means in both the upper and lower portions of the body. There is an upper shoulder and a lower shoulder in the upper and lower edges

of the sidewall so that the sidewall means of the upper portion may be fitted around the shoulder for attaching the upper portion of the body to the lower portion of the body. The lower shoulder is provided so that the protective cover may be friction slide-fitted to be removably connected to body at the upper sidewall. The sidewall in lower portion of the body of the cutter comprises a blade holding means. This blade holding means comprises a pair of spaced facing inwardly projecting arms having end stop means. The bottom of the device is closed except for a slit. The blade holding means is positioned above the slit and the blade passes through the slit to cut. The device has a centering pin that is firmly set at a central portion in the bottom of the device. The device requires assembling but may be permanently assembled when the cutter is put together using a suitable plastic bonding agent. When the blade and the centering pin are fixed into the tool, the device is placed on an object to be cut. The physical, mechanical and operational differences between the cabbage cutter and Snyder's circle cutter are such that they would not be obvious to a person with ordinary skills in the field. And for the reasons listed above it would not be relative to add the features of the cabbage cutter to Snyder's circle cutter.

c. Seib et al discloses a stoma flange cutter comprising all the elements claimed including a circular top, a circular bottom, a cylindrical body wall, a permanently affixed cap, cutting edge, and a removable protective cover. However, the circular cutting apparatus anticipated by Seib et al which has been compared to the claimed invention as having all the elements as the claimed invention is press fitted into a suitable groove on the first surface of the top section of the device with the sharpened edge extending away from the surface. The appellant argues that the physical appearance of the stoma flange cutter and the way the device operates is significantly different from the cabbage cutter. The stoma flange cutter as a whole is squarish in configuration with two sections that are attached to each other, whereas, the cabbage cutter as a whole is a single round cylinder with the open bottom rim filed or rubbed down to a smooth, thin, sharp cutting and chopping means. The physical, mechanical and operational differences between the stoma flange cutter and the claimed invention, the cabbage cutter, are such that they would not be obvious to a person with ordinary skills in the field. The appellant argues that the differences in the two devices indicate unobviousness, thus, rendering the claimed invention unobvious over the stoma flange cutter anticipated by Seib et al. The two devices utilize a

different principle of operation for a different use. The appellant argues that the stoma flange cutter would not be easily recognized as a cutter because of the physical shape of the device and because the cutting element, that has been compared to the claimed invention, the cabbage cutter, is imbedded within the top section of the device and not easily visible.

d. The kitchen utensil disclosed by B. L Collins differs from the cabbage cutter in that the lower open end of the cylindrical body of the device is beveled internally and externally, a larger beveled area on the external wall than on the internal wall, defining a sharp, circular cutting edge, whereas, the open circular bottom rim of the cabbage cutter is filed or rubbed down evenly, internally and externally, to a smooth, thin, sharp cutting and chopping means. The handgrip of the Collins' kitchen utensil is detachable with an annular recess into which the steel cylindrical body of the device is adapted to be slipped, and the device depends on the frictional engagement between the two for the handgrip to be tightly held to the steel cylinder. The handgrip has an internal sleeve inserted into the cylinder and an internal bevel at the lower end to eliminate obstructions or crevices. Outwardly of the circular recess the handgrip is shorter and is provided with beveled upper and lower surfaces and a serrated peripheral wall to facilitate a firm grip on the device and to provide a cushion for the user's hand, and the device lacks a protective cover for the cutting edge, whereas, the top of the cylindrical body of the cabbage cutter is closed and has a permanently affixed cap (handgrip) that covers the top and extends slightly over onto the wall of the device. The cabbage cutter's closed top with the permanently affixed cap (handgrip) attached makes the device stronger and more durable than Collins' kitchen utensil and provides the device with additional strength to withstand the stronger and harder cutting and chopping that is required of a device to cut cabbage, and enables the user to maintain a better grip on the device which assures a more proficient cutting and chopping than the Collins' device offers. The Collins' device was designed for a variety of uses such as cutting, slicing, and even mixing the ingredients for meatloaf, whereas, the cabbage cutter was designed for one specific use, to cut and chop cabbage. For the aforementioned reasons, it would not be relative to add the features of the cabbage cutter to Collins' kitchen utensil. The appellant argues that the features of the cabbage cutter and the Collins' kitchen utensil are different

enough to satisfy the unobvious requirement for the cabbage cutter to be independently patentable.

e. The vegetable cutter disclosed by Junius F. Bell differs from the cabbage cutter in that the vegetable cutter is provided at a point adjacent the open or cutting end with an annular circumferential corrugation presenting a convex exterior surface, a handle at the closed end, and the device is provided with vent openings near the closed end where air steam or the like will escape while the device is in operation; and the vegetable cutter lacks a protective cover for the cutting edge, whereas, the body of the cabbage cutter has an imperforate, smooth interior and exterior surfaces, and the device has a protective cover for the cutting and chopping edge. The appellant argues that it would not be relative to add the features of the cabbage cutter to Bell's vegetable cutter, the cabbage cutter was designed specifically to cut cabbage and Bell's kitchen cutter was designed to cut potatoes in the operation of preparing them to be cooked. The appellant argues that the unobvious requirements have been met for the reasons listed above.

3. The appellant argues that the differences in the cabbage cutter and all prior art references indicate novelty and unobviousness, thus, rendering the claimed invention, the cabbage cutter, as independently patentable.

4. Since the appellant has used a homemade version of the cabbage cutter to cut cabbage in her own kitchen, she can state with confidence that the device would be a commercial success. The appellant has found the device to cut cabbage better than any other device on the market today. During searches for prior art in the field, the appellant has not found one device to claim to cut cabbage well. There has been a long-felt but unsolved need in the art for a device designed to cut cabbage because, as the appellant has previously pointed out in the patent specification, other devices in the field has failed to display the capability to do the job well. The cabbage cutter could be the simplest cutting device on record but the appellant argues that the device will successfully accomplish the job it was designed to do.

5. The appellant believes that the examiner has not presented a convincing line of reasoning as to why he believes the cabbage cutter and Seib's stoma flange cutter are structurally similar and why the similarities would have been

obvious to the ordinary artisan in the field. The appellant argues that the claimed invention is patentable over Seib et al for all the aforementioned reasons.

Respectfully
Submitted,

Billie Jean Longstreth
BILLIE JEAN LONGSTRETH

Appellant pro se
2204 Roseanne Court
Fairborn, Ohio 45324
Telephone No.: (937) 878-6902

APPENDIX

CLAIMS

I claim a cabbage cutter that is non-powered and hand-operated for cutting and chopping cabbage comprising a hollow, metal, cylindrical body having two ends and when placed in a perpendicular position has a top and a bottom that are connected by a cylindrical wall; the top is closed and has a permanently affixed handgrip that covers the closed top and extends slightly over onto the wall of the cabbage cutter, and provides additional strength to the device; the bottom is open and filed or rubbed down to a smooth, thin, sharp cutting and chopping edge that can be sharpened if the cutting and chopping edge should become dulled from extensive use; the device has a removable protective cover, contiguous with the cutting and chopping edge, that when placed over the cutting and chopping edge serves as a shield from injury, and protects the cutting and chopping edge from becoming damaged when the device is not in use or stored; the device works best when cabbage head is cut in chunks, placed in a large container, and an operator grasps the handgrip and brings the cutting and chopping edge down repeatedly (in an up and down motion) onto the cabbage, cutting the cabbage to desired size.